

### **REMARKS**

Reconsideration of this application and the rejection of claims 33-42 are respectfully requested. Applicants have attempted to address every objection and ground for rejection in the Office Action dated May 9, 2005 (Paper No. 05022005) and believe the application is now in condition for allowance. The claims have been amended to more clearly describe the present invention. The Specification has been amended to correct typographical and grammatical errors. No new matter has been added to the application.

Applicants acknowledge the Examiner's refusal to enter the unsigned Information Disclosure Statement filed December 12, 2003. However, Applicants submit that a properly signed Information Disclosure Statement was filed on May 19, 2005, in response to a Notice of Non-Compliant Amendment mailed April 19, 2005. Accordingly, Applicants respectfully request that the Information Disclosure Statement be entered and considered.

Claims 33, 34, 36 and 37 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dunsworth (U.S. Pat. No. 4,522,861). Dunsworth discloses a phosphorescent substance 28 provided in a plurality of transverse tread plate channels 14, where the substance extends above the top of the channels. (FIGs. 1 and 2; col. 2, ll. 43-48).

In contrast, amended claim 33 recites, among other things, "...an exposed photo-luminescent material located and extending to below a top of any given said one of a channel and a depression..." Dunsworth does not disclose a

material having a surface that is lower than the highest point of the channels, as recited in amended claim 33. Accordingly, Applicants submit that as amended, claim 33 is patentably distinct from Dunsworth, and therefore the rejection of claims 33, 34 and 37 is respectfully traversed.

Claims 33-37 and 39-41 stand rejected under 35 U.S.C. § 102(b) as being anticipated by either Connew (U.S. Pat. No. 4,998,391) or Glatz et al. (U.S. Pat. No. 5,904,017). Connew discloses a device 10 having a recess 13 in which is located a strip of photo-luminescent material 14, the material including three layers: a base layer 20, a layer 21 containing the photo-luminescent material, and a translucent top layer 22 configured for protecting layer 21 against abrasion during use. (Col. 4, ll. 49-50; col. 5, ll. 41-44; col. 6, ll. 31-42). Glatz et al. discloses a photo-luminescent accessory formed from a non-luminescent material with a photo-luminescent material adhered thereto, where the non-luminescent material and the photo-luminescent material are co-extruded. (Col. 5, ll. 9-13; col. 7, ll. 66-67).

In contrast, amended claim 33 recites, among other things, "...an exposed photo-luminescent material located and extending to below a top of any given said one of a channel and a depression..." Applicants contend that as amended, claim 33 is patentably distinct from Connew, because Connew includes a transparent protective layer over the photo-luminescent material (see FIG. 5 of Connew), unlike the "exposed" photo-luminescent material recited in amended claim 33.

Further, Applicants contend that amended claim 33 is patentably distinct from Glatz. As amended, claim 33 recites, among other things, “an exposed photo luminescent material...said photo luminescent material being a dry powder formulation fused to said one of a channel and a depression and composed substantially of a photo-luminescent pigment and a carrier/fixer.” Applicants submit that Glatz does not disclose all of the features now recited in amended claim 33. Specifically, Glatz discloses simultaneous formation of the substrate and photo-luminescent material by coextrusion, rather than fusing a photo-luminescent material to a substrate that has already been formed, as recited in amended claim 33. Accordingly, Applicants respectfully traverse the rejection of claims 33-37 under 35 U.S.C. § 102(b) based on Connew and Glatz.

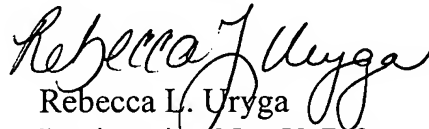
With respect to claims 39-41, amended claim 39 now recites, among other things, “a photo-luminescent device created by preparing a dry powder formulation...providing a substrate having one of a depression and a channel therein...depositing the dry powder formulation onto the substrate to thereby fill the one of a depression and a channel...heating the dry powder formulation to fuse it to the substrate to thereby create a fused material...” Applicants submit that fusing the dry powder formulation to the substrate, inherently pre-formed, as recited in amended claim 39, is patentably distinct from Connew and Glatz, which both disclose simultaneous co-extrusion of the photo-luminescent material and substrate to form the photo-luminescent device. Accordingly, Applicants respectfully traverse the rejection of claims 39-41 under 35 U.S.C. § 102(b).

Claims 38 and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over either Connew or Glatz et al. in view of the Applicants' discussion of the prior art luminescent materials. Claim 38 has been canceled, and accordingly, Applicants submit that the rejection of claim 38 is moot. With respect to claim 42, which depends from claim 39, Applicants contend that due to the amendments made to claim 39 and the above remarks, claim 39 is in allowable form and therefore, claim 42 is also in allowable form. Accordingly, Applicants respectfully traverse the rejection of claim 42 under 35 U.S.C. § 103(a).

In view of the above amendments, the application is respectfully submitted to be in allowable form. Allowance of the rejected claims is respectfully requested. Should the Examiner discover there are remaining issues which may be resolved by a telephone interview, he is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

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